

## FUNDING COMMITMENT REPORT

Form 471 Application Number: 2877a2  
Funding Request Number: 764355 Funding Status: Not Funded  
Services Ordered: Internet Access Service Provider Name: SMC Advanced Solutions, Inc.  
SPIN: 14302213  
Contract Number: N/A  
Billing Account Number: N/A  
Earliest Possible Effective Date of Discount: 07/01/2002  
Contract Expiration Date: 06/30/2003  
Annual Pre-discount Amount for Eligible Recurring Charges: \$84,280.00  
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$16,083.00  
Pre-Discount Amount: \$100,363.00  
Discount Percentage Approved by the STD: N/A  
Funding Commitment Decision: \$0.00 - Bidding Violation  
Funding Commitment Decision Explanation: Associated Form 470 contains service provider (SP) contact information. Competitive bidding violation occurs when SP associated with Form 470 participates in competitive bidding process as a bidder.



# Universal Service Administrative Company Schools & Libraries Division

## Administrator's Decision on Appeal - Funding Year 2002-2003

April 22, 2003

Fran Older  
Approach Learning and Assessment Centers  
2180 Elm 4<sup>th</sup> St., Suite 200  
Santa Ana, CA 92705

Billed Entry Number: 15886  
471 Application Number: 297763  
Funding Request Number(s): 764315, 764324, 764333, 764340, 764341,  
764346, 764350, 764353, 764355  
Your Correspondence Dated: August 28, 2002

After thorough consideration of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made the decision regarding your request of SLD's FY 2002 Funding Commitment Decision. The decision is based on the information provided in your letter dated August 28, 2002, and the SLD's database. The SLD's database is the official source of information for the SLD's funding decisions. If you have filed an appeal with the Federal Communications Commission (FCC), if your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number: 764315, 764324, 764333, 764346, 764341, 764346,  
764350, 764353, 764355

Reason for Appeal: Denied on full  
Explanation:

- In your letter of appeal you have stated that the application was denied because your name was listed as the contact person for a Service Provider (LW Associates) and the Applicant (Approach Learning and Assessment Centers). You have argued that the SLD has 2 different contact persons listed in its database for LW Associates. The USAC database shows the correct contact person, while the SLD database incorrectly shows you, Ms. Fran Older, as the contact person for LWA. You further state that LWA filed Form 498 with USAC on 7/12/2002, which populated the SLD database with the correct contact person information on 8/28/2002. You have requested priority handling of this appeal in order to

avoid interruption of services for children preparing to enter college and to avoid untimely and unbudgeted funding by the school for recurring services. You also ask that the "bidding violation" decision be reversed and removed from the schools files so they may proceed with funding approval on Funding Year 5 (2002) and be able to submit their Funding Year 6 application without delay. You assert that the application has cleared extensive selective reviews, including full disclosure of all bids and proposals. You contend that at no time was a Form 498 SPIN Change Correction processed by the service provider or the applicant to include your name as the contact person for the service provider and that it seems that an internal typographical error is the only explanation for the confusion. You state that due diligence was exhibited by the applicant and the service provider for all timelines required for applications and documentation, while it took the SLD 45 days to make a change that you believe could have been made by FAX through phone, fax or e-mail. You again request priority status as the school has suffered an unnecessary delay in Funding Year 1999 when their application was accepted on appeal after an unnecessary lengthy delay.

Upon review of the appeal it was determined that your Form 470 included service provider contact information in Block 1, Item 6. This information includes the name of Fran Older, located at 5319 University Dr # 416, Irvine, CA, with the phone # 949-766-1763, and fax # 949-766-4125. At the time the selective review was performed, these were the contact person, address, and phone number for LW Associates as listed in the SLD database for SPIN contacts. On appeal you have acknowledged that this information was changed by the service provider to remove your information on 7/12/2002, 11 days after the date of your Funding Commitment Decision Letter. On appeal you have alleged that an internal SLD error is responsible for your name, address, and phone number appearing as contact for the service provider. This is contradicted in a letter that has been written in your behalf to the SLD from Congresswoman Loretta Sanchez dated 10/30/2002. Congresswoman Sanchez attributes this error to a misunderstanding of program rules as when the form was filed, LW Associates simply thought that the contact on the form should be the person who handled the questions and correspondence for the applicant. This correspondence also states that Ms. Older is an independent E-rate consultant and is not paid or connected with any service provider in the state of California. However, at the time the selective review was reviewed, the SLD's records indicated that Fran Older was the contact person for LW Associates. Therefore, the SLD could only conclude that the contact person for the applicant was connected to the service provider, LW Associates. Program rules require applicants to provide a fair and open competitive bidding process. As per the SLD website: "In order to be sure that a fair and open competition is achieved, any marketing discussions you hold with service providers must be neutral, so as not to taint the competitive bidding process. That is, you should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information or allow them to unfairly compete in any way. A conflict of interest exists, for example, when an applicant's consultant

who is involved in determining the services sought by the applicant and who is involved in the selection of the applicant's service providers, is associated with a service provider that was selected." As the Nichols consultant/contact person is also the contact person for a service provider from whom the applicant is requesting services, all FRN's that are associated with this Form 470 must be denied per program rules. Consequently, the appeal is denied.

FCC rules require applicants to seek competitive bids and in selecting a service provider to carefully consider all bids.<sup>1</sup> FCC rules further require applicants to comply with all applicable state and local competitive bidding requirements.<sup>2</sup> In the May 23, 2000 *MasterMind Internet Services, Inc. (MasterMind)* appeals decision, the FCC upheld SLD's decision to deny funding where a MasterMind employee was listed as the contact person on the FCC Form 470 and MasterMind participated in the competitive bidding process initiated by the FCC Form 470.<sup>3</sup> The FCC reasoned that under those circumstances, the Forms 470 were defective and violated the Commission's competitive bidding requirements, and that in the absence of valid Form 470, the funding requests were properly denied.<sup>4</sup> Pursuant to FCC guidance, this principle applies to any service provider contact information on an FCC Form 470 including address, telephone and fax numbers, and email address.

Conflict of interest principles that apply in competitive bidding situations include preventing the existence of conflicting roles that could bias a contractor's judgment and preventing unfair competitive advantage.<sup>5</sup> A competitive bidding violation and conflict of interest exists when an applicant's consultant, who is involved in determining the services sought by the applicant and who is involved in the selection of the applicant's service providers, is associated with a service provider that was selected.

If you believe there is a basis for further examination of your application, you may file an appeal with the Federal Communications Commission (FCC) via United States Postal Service, FCC, Office of the Secretary, 445-12<sup>th</sup> Street SW, Washington, DC 20554. If you are submitting your appeal to the FCC by e-file, visit the United States Postal Service, check the SLD web site for more information. Please reference CC Docket Nos. 96-45 and 97-21 on the first page of your appeal. The FCC cannot RECEIVE your appeal WITHIN 60 DAYS OF THE ABOVE DATE ON THIS LETTER for your appeal to be filed in a timely fashion. Further information and new options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site, [www.al.universalservice.org](http://www.al.universalservice.org).

<sup>1</sup> See 47 C.F.R. § 54.304(a)(4)(i)(A).

<sup>2</sup> See 47 C.F.R. § 54.304(a)(4)(i)(B).

<sup>3</sup> See *MasterMind Internet Services, Inc.*, CC Docket 96-45, ¶ 9 (May 25, 2000).

<sup>4</sup> See *id.*

<sup>5</sup> See, e.g., 47 C.F.R. § 9.305(a)(3).

## **Exhibit 6**

## EXHIBIT A

**STATEMENT OF FACTS  
And  
CERTIFICATION  
To  
USAC/SLD  
Pertaining to e-Rate Program  
Funding Years 1998, 1999, 2000, 2001, 2002**

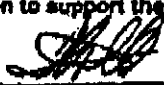
I certify that the information provided on FCC Forms 473 to USAC and/or SLD on any and all e-Rate program funding years identifying me as the Contact Person was an honest mistake in the interpretation of instructions as to whom correspondence and questions should be directed. The Service Provider, LW Associates, misinterpreted the instructions to mean that it should be the Applicant's contact person most familiar with questions pertaining to e-Rate forms.

Be advised that as soon as this mistake was brought to my attention in connection with Funding Year 2003 (FY03), it was reported to the Service Provider who then immediately corrected the error in both databases at USAC and SLD by filing a Form 498 with USAC. On July 29, 2003, USAC verified the change was completed and my name was removed from both databases.

Be further advised that the Private Mail Box set up at 6319 University Drive, PMB #418, Irvine, CA, 92612 was opened only for the purpose of expeditious handling of e-Rate time-sensitive correspondence and a safe harbor for e-rate checks from the US Treasury. It was not until the later years in the e-rate program that SLD started pre-notification to Applicants and Service Providers that checks were in the mail. Be assured that all mail directed to me at the address was immediately re-directed to James Carter, the CTO of LW Associates. James Carter is the person authorized on Form 498 as the official contact person for LW Associates. It was simply an honest mistake that is now corrected in your records by filing the Form 498. The address is no longer used by LW Associates and at no time was it the physical address for LW Associates. I will continue to use the address on behalf of the Applicant, Approach Learning and Assessment Centers for e-Rate related correspondence. Be assured that it was never the physical address of my office, and further, at no time has my office been associated with LW Associates.

Be further advised that I am not, and have never been, a consultant to LW Associates. I am an independent consultant serving e-Rate Applicants (Approach Learning and Assessment Centers in Santa Ana, CA for Funding Years 1998 through 2002; the West Fresno School District in Fresno, CA for Funding Years 2001 and 2002; the Highland Park School District in Detroit, MI for a Good Samaritan Review). I contact Service Providers only when it pertains to e-Rate matters on behalf of Applicants.

Attached is documentation to support the above-referenced Statement of Facts.

Signature:	
Printed Name:	Frances B. Older
Company:	Fran Older
Title:	Consultant
Date:	March 20, 2003

6

## EXHIBIT B

**STATEMENT OF FACTS  
And  
CERTIFICATION  
To  
USAC/SLD  
Pertaining to e-Rate Program  
Funding Years 1998, 1999, 2000, 2001, 2002**

I certify that the information provided on FCC Forms 473 to USAC and/or SLD on any and all e-Rate program funding years identifying Ms. Fran Older as the Contact Person was an honest mistake in the interpretation of instructions as to whom correspondence and questions should be directed. It was my interpretation of the instructions that it should be the Applicant's contact person most familiar with questions pertaining to forms.

Be advised that as soon as this mistake was brought to my attention in connection with Funding Year 2003 (FY03), I corrected the error in both databases at USAC and SLD by filing a Form 488 with USAC. On July 23, 2002, USAC verified the change was completed.

Be further advised that the Private Mail Box set up at 8319 University Drive, PMB #416, Irvine, CA, 92612 was opened only for the purpose of expeditious handling of e-Rate time-sensitive correspondence and a safe harbor for e-rate checks from the US Treasury. It was not until the later years in the e-rate program that SLD started pre-notification to Applicants and Service Providers that checks were in the mail. Be assured that all mail directed to Ms. Fran Older at the address was immediately re-directed to me for processing. This was an honest mistake that is now corrected in your records by filing the Form 488. The address is no longer used by LW Associates and at no time was it the physical address for LW Associates.

Be further advised that Ms. Fran Older is not now, and has never been, a consultant to LW Associates. Ms. Older is a consultant to the Applicant, Approach Learning and Assessment Centers, Santa Ana, CA. (BEA 153862), and, when necessary, contacts this office as it pertains to e-Rate matters only on behalf of the Applicant.

Be further advised that LW Associates has made every effort to uphold the rules and regulations of the e-Rate program in all funding years. The attachments will support the facts mentioned above and will also support the fact that LW Associates refunded \$2,439.10 to USAC/SLD under Contract No. LWA008127 on June 26, 2002 and also refunded the Applicant their 10% share of costs on the same Contract, the same date, in the amount of \$1,059.90. This evidence is provided to make known to USAC/SLD that LW Associates has cooperated with and applied due diligence to the understanding and implementation of the e-Rate program to the best of our ability.

Signature



Printed Name

JAMES CARTERCompany/  
OrganizationLW ASSOCIATES

/ SPIN 143808276

Title

CTO

Date

26 MAR 03

## **Exhibit 7**



## FCC Form 470 - Schools &amp; Libraries (USAC)

Page 1 of 2

Graphics Off



The Universal Service Administrative Company

Home

High Cost

Low Income

Rural Health Care

Schools &amp; Libraries

Overview

About the SLD

Applicants

Process Flowchart

Timetable/Deadlines

Service Providers

Conference Calls

Provider Manual

Invoicing

Disbursements

Tools

Commitments Search

Data Requests

Form 471 Application

Status

Billed Entity Search

SPIN Search

FRN Extensions

Forms

Applicants PIN Request System

Apply Online

Applicant Forms

Provider Forms

SL Main &gt; Applicants &gt; FCC Form 470

## FCC Form 470

## The FCC Form 470 Opens a Competitive Process for the Services Desired

After the technology plan has been developed and the applicant has identified the products and services needed to implement the plan, the applicant submits to the SLD a Form 470 ("Description of Services Requested and Certification Form") either online or on paper. The SLD posts completed forms on the web site to notify service providers that the applicant is seeking the products and services identified.

Applicants must wait at least 28 days after the Form 470 is posted to the web site and consider all bids they receive before selecting the service provider to provide the services desired. In addition, applicants must comply with all applicable state and local procurement rules and regulations and competitive bidding requirements. A complete description of the requirements associated with the Form 470 can be found in the Form 470 Instructions.

- ▶ An applicant cannot seek discounts for services in a category of service on the Form 471 if those services in those categories were not indicated on a Form 470.
- ▶ The Form 470 MUST be completed by the entity that will negotiate with potential service providers.
- ▶ The Form 470 cannot be completed by a service provider who will participate in the competitive process as a bidder. If a service provider is involved in preparing the Form 470 and that service provider appears on the associated Form 471, this will taint the competitive process and lead to denial of funding requests that rely on that Form 470.
- ▶ The Form 470 applicant is responsible for ensuring an open, fair competitive process and selecting the most cost-effective provider of the desired services.
- ▶ The applicant should save all competing bids for services to be able to demonstrate that the bid chosen is the most cost-effective, with price being the primary consideration. As with all documents that may be requested as part of an audit or other inquiry, such bids should be saved for at least five years.

Note that once an applicant has signed a multi-year contract in a prior funding year pursuant to a posted Form 470, it need not submit a new Form 470 to be eligible to

## Related Documents:

- ▶ [Technology Plan](#)
- ▶ [FCC Form 470](#)
- ▶ [FCC Form 471](#)
- ▶ [Funding Commitment Decision Letter](#)
- ▶ [FCC Form 486](#)
- ▶ [Invoicing](#)
- ▶ [Records Retention](#)
- ▶ [More Information](#)
- ▶ [E-Rate Timetable](#)



## QUICK LINKS

- [Reference Area](#)
- [Appeals](#)
- [Eligible Services List](#)
- [Discount Matrix](#)
- [Changes & Corrections](#)
- [Waste, Fraud, & Abuse Task Force](#)

## SITE SEARCH

   
[Search Tips](#)

## CONTACT INFO

- [Contact Us](#)
- [Whistleblower Hotline - Report Waste, Fraud, & Abuse](#)

## SITE HELP

- [Get Help!](#)
- [Site Map](#)
- [Site Tour](#)
- [Website Policy](#)

**FCC Form 470 - Schools & Libraries (USAC)**

**Page 2 of 2**

apply for discounts on the services provided under that multi-year contract for future funding years.

After the SLD has successfully posted a Form 470 to the web site, the SLD sends the applicant a Form 470 Receipt Notification Letter, which provides important information, including the "Allowable Vendor Selection/Contract Date," the earliest date the applicant can execute a contract, select a service provider, and sign and submit the Form 471.

Content Last Modified: April 3, 2003

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Our hours of operation are 8AM to 8PM, Eastern Time, Monday through Friday.  
Aware of fraud, waste, and abuse, report it to our Whistleblower Hotline!

**PROOF OF SERVICE BY NEXT-DAY DELIVERY**


I, Heather L. Hardy, declare:

I am employed in Santa Clara County. I am over the age of 18 years and not a party to the within action. My business address is Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, California 94304-1050. I am readily familiar with Wilson Sonsini Goodrich & Rosati's practice for collection and processing of correspondence for next-day delivery by an express mail service. In the ordinary course of business, correspondence would be consigned to an express mail service on this date.

On this date, I served **REQUEST FOR REVIEW OF THE DECISION OF THE UNIVERSAL SERVICE ADMINISTRATOR DENYING APPEAL BY INTER-TEL, INC.** on the person(s) listed below by placing the document(s) described above in an envelope addressed as indicated below, which I sealed. I consigned the envelope(s) to an express mail service by placing it/them for collection and processing on this day, following ordinary business practices at Wilson Sonsini Goodrich & Rosati.

**Federal Communications Commission  
Office of the Secretary  
9300 East Hampton Dr.  
Capitol Heights, Maryland 20743**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Palo Alto, California on September 10, 2003.

  
Heather L. Hardy